



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Response to Public Comments

Regarding

General Discharge Permit for Animal Feeding Operations

NPDES Permit # MDG01, State Discharge Permit # 14AF

November 20, 2014



RESPONSE DOCUMENT

General Discharge Permit for Animal Feeding Operations

NPDES Permit # MDG01, State Discharge Permit # 14AF

On October 14, 2014, the Maryland Department of the Environment (“MDE” or “the Department”) held a public hearing regarding MDE’s September 5, 2014 Tentative Determination to revise and reissue a general discharge permit for animal feeding operations (GD Permit), including requirements for concentrated animal feeding operations (CAFOs). MDE received formal testimony at the hearing on October 14, 2014 and written comments were received through the end of the comment period (the close of business on October 20, 2014). MDE has considered all of the comments received and has made a Final Determination to reissue the permit with the changes described in this document.

Note: As provided by § 1-601(c) of the Environment Article, a Final Determination by the Department on the issuance, denial, renewal, or revision of this permit is subject to judicial review at the request of any person that: (1) Meets the threshold standing requirements under federal law; and (2) (i) Is the applicant; or (ii) Participated in the public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided. Judicial review is based on the administrative record before the Department and limited to objections raised during the public comment period unless the petitioner demonstrates that: (i) The objections were not reasonably ascertainable during the comment period; or (ii) Grounds for the objections arose after the comment period. Md. Code Ann., Envir. § 1-601(d). A person petitioning for judicial review shall file the petition in accordance with Title 1, Subtitle 6 of the Environment Article and the Maryland Rules. Md. Code Ann., Envir. § 1-605 (a), (c). A party submitting a petition for judicial review shall file the petition within thirty (30) calendar days after publication of a notice of Final Determination. Md. Code Ann., Envir. § 1-605 (b).

In addition to the proposed revisions to the current GD Permit, which were included in the Tentative Determination issued by the Department on September 5, 2014, MDE has made the following revisions and clarifications in response to comments received as part of the public participation process:

Part I.A.5.b: Reworded to clarify that the deadlines listed for submitting an updated notice of intent and required plans for existing MAFOs that have become CAFOs applies only to MAFOs that are designated as CAFOs under 40 CFR §122.23(c).

Part III.F: Reduced the annual permit fees for small, medium, and large CAFOs to \$60, \$300, and \$800, respectively.

Part IV.A.1.a(1) and (2): Clarified that the provision allowing use of other NRCS Practice Standards for stockpiling to develop required plans is in addition to and not an alternative to the requirement to form piles of litter in conformance with NRCS Practice Standard 633.

Part IV.A.6: Changed the requirement to document inspections of animal waste storage areas once annually for dry animal waste operations to once every three months. Changed the

requirement to document inspections of storm water routing structures once annually for dry animal waste operations to once weekly.

Part V.A: Added “total phosphorus” and “any other constituents as may be required by the Department” to the list of constituents that must be analyzed when the Department requires a permittee to collect samples of surface discharges.

Part V.C: Added to the list of items to be included in the CAFO annual report “any other information required to be reported under federal or State law.”

MDE has also made the following typographical corrections to the GD Permit:

Part I.A.5.a: The missing word “or” was added between Part I.A.5.a.i(a) and I.A.5.a.i(b). The improper capitalization of “is” was fixed in I.A.5.a.i(b). The references to I.A.5.a were revised to reference Part I.A.5.a.i(a).

Part I.A.5.b: Comprehensive Nutrient Management Plan (CNMP) was replaced with “required plan” to reflect the change of the CAFO-only requirement for submission of a CNMP.

Part II.E: The State general discharge permit number was updated to 14AF.

Part IV.A.1: Deleted extra spaces.

Part IV.A.1.b: Added a space between “plan” and “must” in the first sentence.

Part IV.A.7.a: Deleted extra periods after items 1) through 5).

The following is a summary of comments to the proposed renewal of the GD Permit and the Department’s responses. The comments are presented in outline form. Bold text indicates comments received, followed by the Department’s responses, which are unbolded. Roman numerals introduce broad categories of related comments. Some categories of comments include a single response by the Department applicable to the group of comments. Other categories of comments include specific responses to each subcategory of comments.

- I. **The GD Permit should continue to cover certain animal feeding operations (AFOs) that “propose to discharge.” (Part I.A.1)** The GD Permit continues to apply to AFOs that propose to discharge, as set forth in Part I.A.1 of the GD Permit.
- II. **Maryland Animal Feeding Operations (MAFOs) with uncovered litter stockpiles on bare ground inherently propose to discharge and should be required to apply for CAFO permits (Part I.A.1).** The GD Permit’s conditions for temporary stockpiling of poultry litter are identical to those in the previous GD Permit in Part IV.B.6.b and c. These provisions were upheld by the Maryland Court of Special Appeals. *See Assateague Coastkeeper, et al. v. Maryland Department of the Environment*, 200 Md. App. 665 (2011). As in the previous GD

Permit, this GD Permit provides for revision of the 30-day limit for unlined storage of poultry litter at MAFOs if reputable research conducted based on a plan approved by MDE and MDA indicates that 30 days is more restrictive than necessary to protect water quality or that other more effective methods are recommended and available. No such research has been approved by MDE and MDA. MAFOs are design, constructed, operated, and maintained such that a discharged to surface waters does not occur. Operations that stockpile poultry litter on bare ground do not necessarily propose to discharge and may be MAFOs or CAFOs. Therefore, no change to the GD Permit has been made.

- III. **The GD Permit states that a MAFO that becomes a CAFO must submit an updated notice of intent (NOI) and required plans within a certain number of days after being “designated by the Department.” This designation language should be removed because if MDE fails to designate a MAFO as a CAFO, it is unclear when the documents must be submitted. It will also delay public review of the NOIs and plans. (Part I.A.5.b).** MAFOs may become CAFOs automatically or by designation. A MAFO becomes a CAFO automatically if it discharges or proposes to discharge to surface waters of the State. Under 40 CFR §122.23(c), the Department may also designate an AFO as a CAFO by determining that it is a significant contributor of pollutants to waters of the State. The deadline for submitting an updated NOI, required plan, and annual permit fee in Part I.A.5.b was intended to apply only to a MAFO that becomes a CAFO as a result of designation by the Department under 40 CFR §122.23(c). It does not apply to a MAFO that becomes a CAFO automatically. Those MAFOs would be subject to the requirements in Part IV.F regarding changes in permitted operations. This has been clarified in Part I.A.5.b of the GD Permit.
- IV. **The GD Permit should define “25-year, 24-hour storm event.” MDE should rely on current climate data rather than the National Weather Service rainfall atlas used by the EPA, which is outdated (Part I.B.2).** Under 40 CFR §412.2, the 25-year, 24-hour storm event is determined based on the National Weather Service atlas “or equivalent regional or State rainfall probability information developed from this source.” To avoid inconsistency with federal requirements, the Department will continue to use the source of rainfall data specified in federal regulations. Therefore, no change to the GD Permit has been made.
- V. **MDE should ensure that definitions of animal waste and poultry litter are adequately inclusive (Part II.B).** The commenter did not elaborate on any concerns with these definitions or provide any examples of materials that should be included but are not. It is the Department’s position that these definitions are consistent with federal regulations and adequately inclusive to protect the environment. The definition of animal waste includes all manure from any animals that are part of the animal feeding operation. Poultry litter manure, a subset of animal waste, is defined to include bedding materials as well as fecal and urinary excretions of poultry.

- VI. **MDE should clarify the definition of “frozen ground” to ensure it is adequate and compare it to definitions in other states (Part II.M).** The commenter did not elaborate on any concerns with the clarity or adequacy of the definition of “frozen ground.” The definition in the GD Permit is identical to the definition in the previous GD Permit. The Department’s position is that the definition is clear as stated. It is specific as to the depths at which soil must be frozen to be considered frozen ground. The GD Permit prohibits land application of animal waste on frozen or snow-covered ground, except with written permission by the Department in the case of imminent storage failures or other dire emergencies. It is the Department’s position that this prohibition is adequately protective of the environment. Therefore, no change to the GD Permit has been made.
- VII. **We support the change allowing CAFO operators to submit a NMP and Conservation Plan in lieu of the Comprehensive Nutrient Management Plan (CNMP) (Part III.A.2; III.B.2; and IV.A.1).** It is the Department’s position that this change is at least as stringent as the current GD Permit but will allow AFOs to obtain and update plans in a timelier manner. The required plans must still comply with the requirements in COMAR 26.08.04.09N(3)(b) and the federal regulations in 40 CFR §122.42(e)(1). These regulations address the requirement of the nine minimum standards to protect water quality.
- VIII. **It should be clarified that NMPs submitted by CAFOs are publically accessible at all times, not just during the opportunity for public comment prior to Department approval. While NMPs are excluded from public access under Maryland law (Agriculture Article, § 8-101.1(b)(2)), they are not excluded under the federal Clean Water Act delegated permitting scheme (Part III.B).** All applications for State and NPDES discharge permits and supporting information are available for public inspection and copying in accordance with the Maryland Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland, and COMAR 26.08.04.09N(3)(f). Public access to information is generally outside the scope of this GD Permit, which includes conditions for a permittee to follow, rather than rights of the public relative to the permitting program. The statement about public access and opportunity to comment after submission of the NOI and required plans is included because it relates to the process for being covered under the GD Permit, which is of interest to the permittee. Therefore, no change to the GD Permit has been made.
- IX. **The statement that the Department may request additional information after “receipt and/or review” of a NOI should be changed to “receipt and review” (Part III.B.1).** The intent was that the Department may request the additional information immediately after receipt of the NOI, or after review of the NOI reveals the need for additional information. Changing this to “and” would require the Department to wait until after review of the NOI to request additional information, which is impractical if the additional information is necessary to allow for a complete review. Therefore, no change to the GD Permit has been made.

X. MDE should (or should not) collect a CAFO annual permit fee (Part III.F)

- A. The fee disadvantages Maryland farmers because there is no CAFO permit fee in Delaware or Virginia. Imposing fees that are not imposed in neighboring states makes Maryland less business-friendly and drives business growth to other states. In the past, the Department stated that there would be no fee in Maryland as long as there is no fee in Delaware.**
- B. It is not the responsibility of poultry producers to address the Department's budgetary issues.**
- C. The maximum fee of \$1,200 annually is too high. The fee should instead be \$100 annually and when violations occur, fines should be used.**
- D. Poultry integrators frequently require farmers to make expensive upgrades, which reduce potential profits. There is no guarantee of income from poultry houses and there is little financial leeway in the poultry industry. This fee would therefore pose a financial hardship on poultry growers. Some farmers would be put out of business.**
- E. Farmers are already experiencing other financial challenges due to high electric bills, repairs, mortgage payments, etc. and the fee would compound these difficulties. The fee would place significant financial burdens on farming families and/or would encourage "factory farms" because farmers would need to add more houses to pay for fees.**
- F. The fee is unnecessary.**
- G. The fee will prevent farmers from having money available for implementing additional best management practices.**
- H. If collected, the fee revenue should go to the CAFO program and should not be removed from the Fund for other purposes. The fee will result in no positive environmental impacts. What is the purpose of the fee; how will the revenue be used; and who will be held accountable for uses of the funds?**
- I. The Department should remove from the GD Permit, regulations, and statute all language allowing a fee to be collected.**
- J. Fees must be adequate to support the CAFO program and must be collected. The proposed fees, even if collected, are inadequate; additional inspectors, compliance staff, and permit-writers are needed. An insufficient number of permit-writers has led to long delays in the past.**
- K. The Department does not have the legal authority to waive the fees.**
- L. Fees should be imposed on MAFOs as well as CAFOs.**

Environment Article, Section 9-325, Annotated Code of Maryland, requires the Department to set a reasonable fee. Also, COMAR 26.08.04.09-1J(1) states that "A CAFO shall pay an annual permit fee." The Final Determination is to adjust the annual permit fees in Part III,

Section F.1 "CAFO Annual Permit Fee", of the GD Permit from \$120 to \$60 for small size category, from \$600 to \$300 for medium size category, and from \$1,200 to \$800 for large size category. Also, Sections F.1 and 2 of the GD Permit are revised to address this adjustment and to streamline the payments of the annual permit fee. The Department will pursue a regulatory change to implement this adjustment.

- XI. The requirements for litter stockpiles should be clarified. The language in Part IV.A.1.a(1) and (2) is vague and contradictory.** Part IV.A.1.a(1) requires piles of litter to be formed in conformance with NRCS Practice Standard 633. Part IV.A.1.a(2) allows additional NRCS Practice Standards for stockpiling to be used in developing the required plans until Maryland completes a standard specific to Maryland. This use of additional standards in developing the required plans is not an alternative to conforming to NRCS Practice Standard 633 in the formation of the stockpiles, but was intended as a separate statement. To clarify this intent, the semicolon after Part IV.A.1.a(1) will be replaced with a period and the word "other" at the beginning of Part IV.A.1.a(2) will be replaced with "additional."
- XII. MDE should prohibit placement of uncovered stockpiles of manure on bare ground for any period of time (IV.A.1.a).** See response to comment II.
- XIII. The GD Permit should define "imminent storage failure," "catastrophic," and "dire emergency" as these terms relate to the prohibition on spreading on frozen ground. While MDE has indicated that guidance on this issue appears on the Department's website, the language should be written into the GD Permit to reduce confusion (Part IV.A.4).** The Department will evaluate requests for permission to apply animal waste on frozen ground due to imminent storage failure or other dire emergency on a case-by-case basis. Further definition of these terms would limit the Department's ability to address case-specific situations. This approach is consistent with MDA guidance on nutrient application, which states that "[a]pplications required in emergency situations such as imminent overflow of a storage facility shall be managed in consultation with the Maryland Department of Agriculture. Operators in such situations shall contact the MDA regional nutrient management representative for guidance." (MDA, Nutrient Management Manual, Nutrient Application Requirements, Section III.D.3.vi.) Therefore, no change to the GD Permit has been made.
- XIV. Recordkeeping requirements are too extensive or not extensive enough (Part IV.A.6 and 7, Part V.B, and Part V.C).**
- A. The increase in recordkeeping as result of the GD Permit has been too difficult to comply with. Recordkeeping requirements are already very time consuming and there is no need for additional recordkeeping.** The GD Permit includes the recordkeeping requirements established in federal regulations under 40 CFR §122.42(e)(2). The changes to the logbook provisions in IV.A.6 and 7 were necessary to clarify which records must be kept for no-land operations; the previous GD Permit did not differentiate

between recordkeeping requirements for land and no-land operations. For example, instead of recording the fields where animal waste is distributed, a no-land operation is required to record the recipients of transferred animal waste. The recordkeeping requirements also ensure that the operator has adequate records to complete the annual report.

- B. If the Department revises its forms it should be the Department's responsibility to inform poultry producers of the change. I do not have time to search the Department's website for form revisions.** While the GD Permit requires permittees to keep and report certain information, there is no required form for keeping records. Some optional recordkeeping forms (e.g. log sheets) are made available by the Department on its website as a courtesy to assist operators in complying with the recordkeeping requirements.
- C. Regarding the requirement for documentation of inspection of animal waste storage areas and storm water routing structures in Part IV.A., MDE already requires documentations of these inspections. There is already a required inspection form for this. (Part IV.A.6).** The previous GD Permit stated in Part IV.D.2 that the permittee must conduct inspections of the animal waste storage areas and storm water routing structures, but it did not explicitly state that documentation of those inspections was to be included in the recordkeeping requirements. The renewal GD Permit relocates this requirement to the section of the GD Permit addressing the recordkeeping requirements and makes clear that documentation of inspections is required as part of the recordkeeping.
- D. The GD Permit changes the requirement for farmers to inspect animal waste storage areas and stormwater routing structures from once per week to once per year [for dry animal waste systems]. Operators should be required to inspect storage sheds weekly.** Federal regulations require weekly inspections of manure, litter, and process wastewater impoundments. 40 CFR §§412.37(a)(1); 412.47;. However, this applies only to liquid animal waste systems where impoundments are used. This is confirmed in 40 CFR §412.37(a)(1)(iii), which requires the weekly inspections to note the "level in liquid impoundments as indicated by the depth marker..." In contrast, the federal regulations contain no particular frequency for inspections of dry manure storage structures, such as sheds, other than to state that inspections of the CAFO production area must be "routine." Liquid impoundments are more subject to overflows and failures than are sheds used to store dry manure. Liquid impoundments may be exposed to direct precipitation and runoff, so regular inspections are important to ensure there is sufficient freeboard to prevent discharges in compliance with the permit. For these reasons, more frequent inspections are needed to ensure the continued integrity and capacity of liquid impoundments than are needed to provide a similar level of protection for dry manure storage systems.

It is the Department's position that weekly inspections of dry manure storage structures are not necessary to provide adequate environmental protection. However, the Department will increase the frequency of inspections for dry manure storage structures from annually (in the draft GD Permit) to once every three months. This inspection frequency will remain more stringent than the federal regulations. It will also provide for better protection of the environment in the event of damage or failure of the dry manure storage structure by reducing the maximum time period between failure of the structure and detection by the permittee.

For stormwater routing structures, the federal regulations require "weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure." 40 CFR §412.37(a)(1)(i); 412.47(a). To ensure consistency with federal regulations, the inspection frequency for storm water routing structures at AFOs with dry manure handling systems will be revised to weekly.

XV. Questions related to inclusion of field ditches in setback requirements (Part IV.B.8.a).

- A. Is the proposal to clarify that field ditches are included for setback requirements based on EPA's desire to include farm ditches, swales, and shallow water areas as "waters of the United States"? Or, was this a proposal by MDE?** This is a clarification of the previous permit and is not based on EPA's definition of waters of the United States. Field ditches are not "waters of the State" as that term is defined in Environment Article, §9-101(l), Annotated Code of Maryland. Accordingly, MDE included this provision to make clear that the setbacks apply to field ditches *in addition to* waters of the State. Field ditches can channel runoff to waters of the State, so this clarification was necessary to be adequately protective of the environment.
- B. Does the inclusion of field ditches in the setback requirements include swales that are temporarily made in fields during planting time?** No. "Field ditch" is defined in the GD Permit and includes perennial or intermittent man-made drainage ditches that are distinguished from natural streams by their landscape position and associated soil mapping units.
- C. Does the proposal clarify ditches that are intermittent or ephemeral?** See response to comment III.B. Field ditches include intermittent drainage ditches, but not ephemeral streams.

XVI. "Floodplain" should be further defined to indicate the 100-year floodplain to reference the maps from the Flood Insurance Rate Map Program (Part IV.B.8). "Waters of the

State” is defined to include the 100-year flood plain determined by the Department. It is the Department’s position that it is unnecessary to limit in the GD Permit which source must be used in all cases to determine the flood plain. Therefore, no change to the GD Permit has been made.

- XVII. MDE should require all permittees to conduct annual water sampling for nitrogen and phosphorus at downstream sites and during time periods identified by the facility’s nutrient management planner (Part V.A).** As noted by the commenter, the federal Clean Water Act (CWA) requires a permitting agency to require a point source operator to “install, use, and maintain such monitoring equipment or methods...and provide such other information as [it] may reasonably require” whenever this is “required to carry out the objective of the” CWA. 33 U.S.C. § 1318(a)(1)(A)(iii)—(iv). The federal regulations require NPDES permits to include certain conditions “when applicable.” Among these are monitoring requirements “to ensure compliance with permit limitations,” including the “mass (or other measurement specified in the permit) for each pollutant limited in the permit,” the “volume of effluent discharged from each outfall,” and “[o]ther measurements as appropriate...” 40 CFR §122.44(i).

Effluent monitoring is required under some types of NPDES permits. However, because of the nature of potential discharges from AFOs and the regulatory approach taken in the GD Permit, it is the Department’s position that annual water sampling at downstream sites by all permittees is not “required to carry out the objective” of the CWA or to “ensure compliance with permit limitations.” Unlike water quality-based NPDES permits, the GD Permit relies primarily on technology, in this case best management practices (BMPs), to adequately protect water quality at AFOs. This reflects the approach to CAFO permitting taken in the federal regulations. Rather than including numeric effluent limitations based on pollution reduction technology and supported by sampling of effluent as they do for some industries, the federal regulations for CAFOs lay out BMPs along with a zero discharge requirement. 40 CFR Part 412. These BMPs are included in site-specific plans. The BMPs and NMPs required by the GD Permit are adequately protective of the environment without the need for downstream water sampling for all permittees. The GD Permit’s reliance on BMPs rather than effluent monitoring also reflects the potential difficulty of tracing downstream pollution back to particular AFOs.

- XVIII. Total phosphorus should be added to the list of pollutants that must be analyzed when the Department requires a facility to conduct sampling (Part V.A.1).** The Department will revise the list of constituents that must be analyzed if the Department requires sampling of surface discharges. Total phosphorus will be added to the list, along with any other constituents as may be required by the Department. Phosphorus is one of the main pollutants that would be expected in discharges from AFOs because it exists in significant levels in animal waste. Therefore, if sampling is required, the sample needs to be analyzed for total

phosphorus in order to adequately evaluate the effectiveness of the required plan. Adding a statement allowing the Department to require analysis for other constituents further enhances environmental protection by allowing the Department to respond to case-specific situations in which other constituents may be expected. While this could previously be accomplished either through requiring an individual discharge permit or initiating enforcement procedures, it is more efficient for the Department and less burdensome to the permittee to allow this to be done under the GD Permit.

XIX. The reporting requirements have been weakened in the renewal GD Permit (Part V.C).

- A. The renewal GD Permit requires annual reporting on a form “provided or approved by” the Department but does not include a sample form. The GD Permit does not appear to require reporting of some important topics, including the integrator, the nutrient analyses of manure, the quantity of manure imported, and soil phosphorus tests. The renewal GD Permit should be revised to include all of the information required in the previous GD Permit.** Aside from the change discussed under comment XIX.C, the reporting requirements are not changing under this GD Permit. While the annual report form itself is no longer included with the GD Permit, the GD Permit requires the permittee to complete and submit the report form provided by the Department. MDE makes the required form available on its website. Not including the form in the GD Permit strengthens the reporting requirement by allowing the Department to revise the form to address any additional information needed during the course of the permit term.
- B. EPA requires CAFO annual reports to include information in 40 CFR §122.42(e)(4)(viii) that is not required in the renewal GD Permit under Part V.C.2. This information should be included in the GD Permit itself. A sample AIR provided by the Department includes some of this information, but is not an actual part of the GD Permit (and the form itself is not mandatory, though it should be).** The form required or provided by the Department will continue to include all items required under federal law. To clarify this, the following will be added to the list of items included in the annual report at Part V.C.2.i: “i. Any other information required to be reported under federal or State law.” See also response to comment XIX.A.
- C. The GD Permit should require permittees to provide data on land application of waste by month rather than by year; this is important to ensure that CAFOs are spreading an appropriate amount of manure for the season (i.e. since land application of manure is generally prohibited in the winter).** All permittees are required to have and follow a NMP, which is incorporated into the GD Permit. NMPs are site-specific and specify the amount and timing of waste application, based on the crop being grown and results of soil testing. Because application rates and timing are based on agronomic need, they are

calculated for each crop being planted rather than on a monthly basis. Application would take place in accordance with the NMP, usually once or twice per year corresponding with planting schedules. For all other months, the reported land application would be zero. As a result, it is equally stringent to report land application annually rather than monthly and is more consistent with the way NMPs are written. It is also consistent with federal regulations, which require reporting of the quantity of land application “in the previous 12 months.” 40 CFR §122.42(e)(4)(viii).

D. MAFOs should be subject to the same reporting requirements as CAFOs under the GD Permit. Although not required under federal law, MAFOs are currently required to report the same information as CAFOs. CAFOs and MAFOs are required to submit the same annual report form, which is a joint MDE and MDA form. The MDE and MDA reporting processes were consolidated in 2012, at which point MAFOs and CAFOs began submitting same forms. This process would not change under the renewal of the GD Permit.

XX. The Department should develop a system that allows permittees to submit annual reports online and makes them publicly accessible online (V.E). At this time, the Department does not have a system in place to accept online submission of annual reports.

XXI. Comments related to right of entry (Part VII.B).

A. EPA should not be allowed to add conditions to the GD Permit (specifically, the addition of EPA to the parties authorized to enter farms) (Part VII. B). EPA has oversight of CAFOs under the CWA. EPA’s oversight includes the right to enter and inspect CAFOs, regardless of whether this right is stated in the GD Permit. MDE added this provision to inform permittees of this fact.

B. The right of entry language should be revised to require notification by phone and scheduling of an appointment before entering the farm unless there is evidence of criminal wrongdoing (Part VII.B). Federal regulations require all NPDES permits, including CAFO permits, to contain authorization for the Department to inspect the permitted site “at reasonable times.” 40 CFR §122.41(i). Therefore, no change to the GD Permit has been made.

C. The Department should retain the right of entry to permitted operations in order to ensure compliance with the GD Permit. The renewal GD Permit retains MDE’s right of entry.

XXII. The condition allowing MDE to impose additional requirements on the permittee under Oil Control laws and the Emergency Planning and Community Right to Know Act should be removed as they are not relevant to the subject of this GD Permit. This condition

advises the permittee that compliance with the GD Permit does not shield the permittee from enforcement of these other laws. It is standard across all NPDES permits.

XXIII. The statement in VII.K that AFOs may be required to implement additional Best Management Practices (BMPs) to respond to future Total Maximum Daily Loads (TMDLs), waste load allocations or changes to the Watershed Implementation Plan (WIP) should not be included (Part VII.K).

- A. Agriculture is already meeting goals under the WIP; many farms already have non-cost shared BMPs already. Focus should instead be placed on businesses, waste water treatment facilities, residences, and municipalities to do their part.
- B. This is unnecessary because it duplicates something EPA is doing already; EPA should not have been able to add this to the permit.
- C. The inclusion of this provision is unfair because it allows the requirements to change during the course of the GD Permit and without public participation. While the language allows farmers to explain why the BMPs are not immediately feasible, this requires extra work on the part of the farmer. Changes to BMPs should be postponed to the next GD Permit rather than being required in the middle of a permit term.
- D. This is unnecessary because the Soil Conservation Offices and NRCS are already working with farmers to install BMPs. EPA does not have a practical knowledge of a working poultry farm; working with farmers to install BMPs should be left to the “technical agencies.”

This provision is included in the GD Permit pursuant to the federal Clean Water Act, 33 U.S.C. §1251 et seq. Any public participation required under State or federal law for changes to the GD Permit or revisions to required plans will be provided.

XXIV. The Agricultural Certainty Program does not allow for this condition (Part VII.K). The GD Permit will be implemented consistent with the Maryland Agricultural Certainty Program, Title 8, Subtitle 10 of the Agriculture Article, Annotated Code of Maryland, and any implementing regulations to be adopted.

XXV. Implementing additional BMPs will take valuable and much needed cropland out of production and may not be very beneficial to the waterways/tributaries. Non-farm sources of pollution should be the subject of greater focus instead of farms, which contribute only 1% of the pollution to the Bay; the Conowingo Dam is responsible for a greater portion of pollution. This comment is not relevant to the renewal of the GD Permit. Consistent with federal law, it is necessary for AFOs to implement BMPs to protect water quality.

XXVI. The permitting process is too complex and takes too long.

- A. It took 5 years to become permitted.**
- B. Attempts to make the process easier rather than more complex are appreciated.**

MDE's delegation under the CWA to implement the federal law and to issue this NPDES permit requires that the Department perform a substantive review of required plans submitted with the NOI prior to registering a permittee under the GD Permit. MDE attempts to carry out its legal responsibility to protect water quality as expeditiously as possible.

XXVII. The GD Permit does not contain sufficient safeguards to ensure that manure transferred to other recipients is not discharged in violation of State or federal law.

- A. The GD Permit should contain a method by which MDE can coordinate with MDA to certify that operations receiving CAFO manure are in compliance with a current NMP. Permittees that transfer waste off-site should be required to obtain the end user's NMP and annual reports and submit those with their own annual implementation reports.**
- B. The Land Application Logbook does not address the possibility that operations with land application may also ship excess manure off site. Both the Land Application Logbook and No-Land Operation Logbooks should specify additional information about the recipient of manure (acres of land application, application rates, etc.)**
- C. Additional information about the recipient of manure should also be included in the permittee's NMP (address, operation type, acreage, application rate). Minimum Standard #8 requires determination of the limiting nutrient, nutrient recommendation, acreage, and expected yield for fields upon which CAFO manure is applied. This is only possible for No-Land Application operations in cooperation with the manure-receiving operator.**
- D. The CAFO permittee or MDE should be required to certify that the recipient of the CAFO manure is land applying the manure in compliance with a current NMP or is otherwise disposing of it in a manner that prevents unpermitted discharges and does not violate state water quality standards or TMDLs.**

Land application of nutrients is regulated under the State's environmental and agricultural laws and regulations, regardless of whether the nutrients originate from AFOs or other sources. This includes the requirement to obtain a NMP for land application of nutrients at agricultural operations. Under the GD Permit, permittees are required to report any land application of manure, litter, or process wastewater on site in the annual report as well as provide information on the destination of any manure exported off site. Compliance with State environmental and agricultural laws and regulations relating to land application prevents water pollution and degradation of State waters. The Department has enforcement authority in the event of unpermitted discharges as a result of land application.

XXVIII. The GD Permit should integrate the pending NMP regulations when the Phosphorus Management Tool is implemented. If and when the Phosphorus Management Tool is

implemented, NMPs will be revised accordingly. The adjusted plans will be incorporated into the GD Permit. Therefore, no change to the GD Permit has been made.

- XXIX. The GD Permit should specify that an entity that has substantial operational control over a CAFO constitutes an “operator” and is thus subject to the State’s CAFO permitting requirements. “Substantial operational control” should include consideration of whether the entity: (1) directs the activity of persons working at the CAFO or MAFO either through a contract or direct supervision or, or on-site participation in, activities at the facility; (2) owns the animals; or (3) specifies how the animals are grown, fed, or medicated.** The Clean Water Act regulates point sources. MDE’s regulations define operator as “that person or those persons with responsibility for the management and performance of each facility.” COMAR 26.08.01.01. It is the Department’s position that the GD Permit is sufficiently protective of the environment.
- XXX. MDE should send each farmer his or her previously submitted NOI and ask for any changes rather than requiring the farmer to fill out a blank NOI. It is time-consuming to look up the latitude/longitude, tax ID property numbers, house sizes, etc. The Department already has this information from the previous NOI.** MDE suggests that farmers retain a copy of all documents submitted to the Department, including NOIs, for at least 5 years.